Issue V.2 *Interconnection Transport* What is the appropriate rate for Verizon to charge AT&T for transport purchased by AT&T for purposes of interconnection – the UNE transport rate or the carrier access rate?

Verizon wants to charge AT&T *access rates* for any interconnection facilities AT&T may lease that do not terminate at a collocation arrangement.[201] In contrast, AT&T believes that UNE transport rates are appropriate when AT&T leases interconnection facilities for local interconnection trunking from Verizon.[202] AT&T's position is fully supported by the law and sound public policy.

Verizon's rationale for its position that transport cannot be priced at UNE rates unless there is a collocation site is that, absent a place to terminate the traffic, Verizon is providing "an end-to-end service" where Verizon is responsible for all aspects of the service.[203] Verizon also claims that if AT&T's position were adopted, it would amount to a new UNE Combination that would not meet the necessary and impair test "given the multiple alternatives available to AT&T."[204] There is no merit to Verizon's arguments.

a. Verizon's contention that the transport facilities at issue are not UNEs contradicts the FCC's definition of unbundled dedicated UNE InterOffice facilities (IOF).

AT&T proposes to purchase UNE IOF between an AT&T building, where Verizon has a fiber terminal, to a Verizon wire center or switch location.[205] Verizon

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removing implicit universal service fund subsidies derived from access charges – including the RIC. It has since eliminated the RIC, and thus the condition imposed in this case no longer applies.

201 Verizon Exh. 4. at 30; Tr. at 2693.

202 AT&T Exh. 3 at 77. AT&T can implement interconnection by either self provisioning facilities to the POI, or by leasing facilities from Verizon or third parties. It is these facilities from the originating carrier's switch to the POI that are characterized as interconnection facilities. *Id.*

203 Verizon Exh. 4 at 31.

204 *Id.* at 31-32.

205 AT&T Exh. 8 at 44.

contends this request does not amount to a request for a UNE.[206] Verizon is wrong. The facilities at issue fall squarely within the FCC's definition of unbundled dedicated UNE IOF, which encompasses all facilities that can be used to "provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers."[207]

Accordingly, Verizon's position violates its obligation to provide access to unbundled network elements. Under § 251(c)(3) of the Act, Verizon has the "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory." With respect to interoffice facilities specifically, the FCC has ruled in both the *Local Competition Order* and more recently in the *UNE Remand Order* that ILECs such as Verizon: "must provide interoffice transmission facilities on an unbundled basis to requesting carriers."[208]

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206 Verizon Exh. 4 at 31.

207 47 C.F.R. 51.319(d)(1)(A). Also, both the *Local Competition Order* and the *UNE Remand Order* broadly define dedicated interoffice facilities. For example, in the *Local Competition Order* the FCC states that "this [dedicated interoffice transport] includes, at a minimum, interoffice facilities between end offices and serving wire center(SWCs), SWCs amd IXC POPs, tandem switches and SWCs. end offices or tandems of incumbent LEC and wire centers of incumbent LECs and requesting carriers" *Local Competition Order* at 440; *see also*, *UNE Remand Order* at ¶ 322.

208 *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-98, Third Report and Order and 4th Further Notice of Proposed Rulemaking, ¶ 321, (Rel. Nov. 5, 1999) (UNE Remand Order); *Local Competition Order* at ¶ 439 et. seq. With respect to Verizon's obligation to provide interoffice facilities, the FCC stated in the *UNE Remand Order*: "Although the record indicates that competitive LECs have deployed transport facilities along certain point to point routes, the record also demonstrated that self provisioned transport, or transport from non-incumbent LEC sources is not sufficiently available as a practical economic or operational matter to warrant exclusion of interoffice transport from an incumbent LECs unbundling obligations at this time." *Id.* at ¶ 321.

b. Collocation is not a prerequisite for access to UNEs.

Verizon's refusal to provide UNE transport without collocation is inconsistent with the FCC's stated policy to establish a broad comprehensive framework for access to UNE transport facilities at TELRIC rates. One of the stated policy goals of the *Local Competition Order* is to further rapid competition deployment by reducing litigation costs and delays that would inevitably result if incumbent LECs had the flexibility to quibble over which trunking facilities qualified as UNEs and which did not. This policy concern was also articulated in the *UNE Remand Order* where the Commission decided to require ubiquitous UNE transport availability instead of accepting the incumbent LECs' plan of linking UNE transport availability to specific services area on a case by case basis. The Commission indicated that one of the benefits of a rule of universal UNE transport availability is that competitors would not face increased litigation costs due to narrow debates over particular service areas.[209]

Further, there is no end-to-end service exemption related to Verizon's obligation to provide facilities at UNE rates for interconnection, as Verizon suggests.[210] This argument appears to be simply a variant of the previously discredited argument that ILECS need not provide UNE-P because the Act requires a CLEC to combine UNEs with its own facilities, an argument that has been rejected outright by the Eighth Circuit and the United States Supreme Court.[211] The Massachusetts Commission, as well, refused to

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[209] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking,* at ¶ 366 (Rel. Nov. 5, 1999) ("UNE Remand Order").

[210] Even Verizon's witness admits that its collocation requirement is not imposed because of any technical issues. Tr. at 1340-1341.

[211] The Eighth Circuit states that "a requesting carrier is not required to own or control some portion of a telecommunications network before being able to purchase unbundled elements" *Iowa Utilities Board v. Federal Communications Commission*, 120 F2d 753, 814 (8th Cir. July 18,

accept Verizon's "end to end service" argument in an AT&T Broadband *(fka* MediaOne Telecommunications of Massachusetts, Inc.)/Verizon arbitration. In that case Verizon claimed that the dedicated transport facilities it leased to AT&T Broadband between the terminating point of a mid-span meet facility located at a Verizon tandem, and Verizon's other tandems should be priced at access rates, because, among other things, it was providing an "end to end access service." The Massachusetts Commission rejected that argument and found that the facilities were inter-office facilities that should be priced at UNE rather than access rates.[212] Thus, Verizon's "end-to-end service" distinction is a distinction without a difference in terms of its obligation to provide interconnection facilities at UNE rates.

c. AT&T's request to purchase transport from Verizon for the purposes of interconnection does not amount to a request for a UNE combination.

Verizon claims that if AT&T's position were adopted, Verizon would be providing AT&T with a new UNE combination.[213] During the hearings, Verizon's witness initially stated that this new combination would consist of UNE IOF, some trunk ports and some cross connects; then he stated the combination would be UNE IOF, a switch port and then a loop.[214] Verizon is wrong on all counts. None of the "combinations" listed are involved in AT&T's request. First, AT&T's witness Mr. Talbott pointed out that AT&T is not talking about trunks in its request for UNE

1997, as amended on rehearing on October 14, 1997) (1997). *See also AT&T Corp. et al. Iowa Utilities Board et al*, 119 S.Ct 721, (1999) [pp. 27-28 of slip op.].

212 *MediaOne Telecommunications of Massachusetts, Petition for Arbitration of Interconnection Rates, Terms, and Conditions with New England Telephone and Telegraph Company d/b/a/ Bell Atlantic-Massachusetts, Inc. v. Bell Atlantic*, D.T.E. 99-42/43-A, (March 15, 2001).

213 Verizon Exh. 4 at 31-32; Tr. at 2694.

214 Tr. at 2694-2695.

transport.[215] Rather, AT&T is addressing methods available to AT&T to provide transport between two points, one of which is purchase UNE dedicated transport. As demonstrated above, dedicated transport can be between a CLEC office and a Verizon office. AT&T is asking for the option to order that dedicated transport and then place a trunk order over that transport. The trunk port referenced by the Verizon witness, Mr. Talbott explained, would be covered under Verizon's reciprocal compensation rate that AT&T would pay Verizon for terminating traffic from the relevant Verizon office.[216] There is also no switch port involved since a switch port is not part of transport—but is associated with trunks not facilities.[217] Moreover, there is no loop involved, because there is no customer on the end of the facility, since AT&T's request is dealing solely with the exchange of traffic.[218] Finally, with respect to cross connects, Verizon's obligation to provide access to UNEs includes the obligation to provide cross connects, so providing a cross connect as part of a UNE does not turn a UNE into a UNE combination.[219] Thus, AT&T is looking to purchase transport from Verizon – plain and simple. There is no new UNE combination involved.

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215 Parties have a list of options by which they would provide the transport facilities over which the trunks would be provisioned. Tr. at 2698.

216 Tr. at 2699.

217 AT&T Exh. 8 at 44.

218 *Id.* at 227.

219 The FCC in the *Local Competition Order* indicated that the scope of the incumbent's obligation to provide access to UNEs included the duty to provide a connection to a network element independent of any duty imposed by subsection 251(c)(2). *Local Competition Order* at ¶ 269. A cross connect is simply a connection scheme between cabling runs, subsystems or equipment. *See UNE Remand Order* at fn 332.

d. UNEs must be priced based on cost and not at access levels.

The facilities at issue are UNEs, and UNEs are priced at TELRIC.[220] Verizon, however, proposes to charge access rates.

This tactic was specifically rejected in both the *Local Competition Order* and *UNE Remand Order,* when the FCC found that incumbents are prohibited from substituting access services in order to avoid their unbundling obligations.[221] In the *UNE Remand Order*, in response to GTE and US West's arguments that competitive LECs have access to ubiquitous transport through the use of incumbent's special access tariff arrangement, the FCC stated:

> If we were to adopt the incumbents' approach, the incumbents could effectively avoid all of the 1996 Act's unbundling and pricing requirements by offering tariffed services that, according to the incumbents, would qualify as alternatives to unbundled network elements. This would effectively eliminate the unbundled network element option for requesting carriers, which would be inconsistent with Congress' intent to make available to requesting carriers three different competitive strategies, including access to unbundled network elements.[222]

Thus, Verizon is prohibited from charging access rates for interconnection facilities.[223]

Issue V.16 Should AT&T have a reciprocal duty to provide transit services to Verizon?

Verizon is asking AT&T to provide Verizon with the same transit services that

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220 47 U.S.C. ¶ 252(d)(1).

221 *UNE Remand Order* at ¶ 354; *Local Competition Order* at ¶ 387.

222 *UNE Remand Order* at ¶ 354.

223 Verizon's access rates exceed the economic costs of providing transport facilities. The FCC has recognized that access charges are not based on forward looking economic cost, but are generally well above economic cost. *First Report and Order, Access Charge Reform,* 12 FCC Rcd 15982, ¶¶ 258-84. (1996). As demonstrated on the record, the price differential between access rates and UNE rates for DS-1 and DS-3 facilities for Virginia is significant. *See* Exh. DLT-7 attached to AT&T Exh. 3.

Verizon provides to AT&T,[224] but the law does not provide for such reciprocal rights, and with good reason. AT&T, however, is willing to provide transit service to Verizon subject to good faith negotiations.

Verizon is obligated under § 251(c)(2)(B) to provide any requesting telecommunications carrier interconnection with Verizon's network "for the *transmission and routing* of telephone exchange service and exchange access." (Emphasis supplied). The additional obligations imposed upon Verizon and other incumbent LECs stem from their market power achieved over decades as monopoly providers of local exchange services. CLECs do not have such market power, and so the Act does not impose reciprocal obligations on them. This Commission specifically acknowledged this in ¶ 220 of the *Local Competition Order* where, in rejecting Bell Atlantic's suggestion that the FCC impose reciprocal interconnection obligations on LECs, the FCC stated that: "251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection."

Accordingly, while AT&T may at its discretion offer transit services to Verizon, as well as any other carrier, there is no basis in law (or in logic, for that matter, given Verizon's dominant market power in the local exchange market) to force it to do so. Under AT&T's proposal, AT&T would agree to enter into good faith negotiations to provide transit service to Verizon, at Verizon's request.[225] This proposal is more that what is required by law and thus is adequate and reasonable.

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[224] Verizon Exh. 4 at 41.

[225] AT&T Exh. 3 at 64-65.

Issue VII.1 Should AT&T be allowed to circumvent over a year's worth of negotiations by inserting language on Network Architecture issues that was never discussed by the Parties?

I. AT&T has the right to submit revised language reflecting its position during negotiation and litigation on Network Architecture issues. [Issue VII-1.]

Verizon suggests in its Supplemental Statement that AT&T has changed its position on transport obligations for interconnection traffic because it has submitted new contract language that does not use Verizon's proposed term "IP".[226] Verizon also points to several other issues that it wants rejected outright by the Commission because they are "new". AT&T disagrees with Verizon's characterization of these issues.

AT&T has maintained a consistent position throughout the negotiations on the issues relating to network architecture. From day one AT&T sought to drive efficient interconnection decisions by proposing that each party is in the best position to determine the point of interconnection for its own originating traffic, as long as the originating party was willing to pay for transport to reach that point of interconnection. The modified language presented to Verizon is entirely consistent with these principles.[227]

AT&T attempted to negotiate in good faith network architecture language that included Verizon's term "IP" (a term which never appears in the Act; *see* discussion of Issue I-1, *supra*) while maintaining its basic position on the interconnection principles set forth above. However, because of the fundamental disagreement between the parties about the underlying issues, the parties were never able to agree upon language.[228] As a result, and given that the FCC's *InterCarrier Compensation NPRM* and its 271 orders in

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226 Verizon Supplemental Statement at 27.

227 AT&T Exh. 3 at 119.

228 *Id.* at 120.

Kansas and Oklahoma[229] have now held that Verizon's IP concept has no merit, AT&T crafted language that more precisely tracked the FCC's clarifications and AT&T's long standing position that parties should be responsible for transporting their own originating traffic. AT&T provided this language to Verizon and suggested that the language more closely tracks the recent FCC clarifications. Verizon refused to budge from its position; it continues to use its IP concept.

In addition to its intransigence concerning the use of "IP", Verizon points to a few issues that it claims should be rejected by the Commission without consideration because they represent "new" issues. These issues are not new, or represent a section reorganization, or are a recasting of AT&T's position on an unresolved issue. There is no reason for the Commission to reject these issues outright and instead it should address and resolve them.

The first issue relates to intra-building interconnection. Verizon states it does not understand AT&T's language relating to intra-building interconnection, yet it also indicates that is has a concern that AT&T's language will provide it with preferential treatment. Intrabuilding interconnection is a method of interconnection where both parties have broadband facility terminals within a building and thus can interconnect using intra-building cable.[230] Intrabuilding interconnection could be accomplished in, for example, "POP hotels" where Verizon and AT&T have adjacent central offices and where Verizon and AT&T each have space within the same building. Although it also would be technically feasible to have intrabuilding interconnection at some customer

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229 *InterCarrier Compensation NPRM* at ¶ 70; *SBC Kansas and Oklahoma Order* at ¶ 233-235.

230 Verizon Supplemental Statement at 29.

locations, such as large multi-tenant buildings, AT&T would not expect to make significant use of intrabuilding interconnection at such locations.[231]

The language AT&T proposes is consistent with the underlying principle that CLECs are entitled to interconnect at any technically feasible point.[232] For this reason, AT&T's proposed contract language on interconnection via cable should be included in the ICA.

Verizon also seeks to have the Commission avoid ruling on transition cost issues. It characterizes language in Schedule Four, Part B, Sec. 3, relating to transition costs, as something which would require Verizon to bear the cost of AT&T's new network architecture when it changes from one design to another.[233] This is not the intent of the language, nor did AT&T suggest differently when this issue was discussed with Verizon on December 7, 2000. Physical conversions place considerable costs on AT&T as well as Verizon. Thus, AT&T has no incentive to physically rearrange existing facilities except in cases where exhaustion of AT&T collocation space prevents AT&T from accessing additional unbundled elements in cages that are also used to receive Verizon's originating traffic, or in those limited circumstances where substantial savings may be realized from a more efficient interconnection arrangement. AT&T would prefer to

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231 AT&T Exh. 3 at 123. AT&T sent a draft of proposed language to Verizon as early as 1999 relating to this issue. During negotiations, AT&T changed the language from this early version as a result of a Verizon suggestion. However, as the parties continued to have disputes concerning interconnection rights and methods, AT&T became concerned that more precise language was needed in order to more specifically define its interconnection rights and limit future controversies, especially following discussions with Verizon on this issue held on December 7, 2000. *Id.*

232 47 U.S.C. § 251(c)(2)(B) (West 1991 and Supp. 2000).

233 Verizon Supplemental Statement at 29.

negotiate with Verizon to address these limited situations in a way that does not impact its current interconnection trunks to minimize transition costs for both Parties.[234]

Also, Verizon confuses the conversion of trunking arrangements with cost allocation issues. AT&T does not, as Verizon suggests, expect Verizon to pay all of the nonrecurring charges when Verizon builds a new facility as part of a transition plan for converting two-way trunks to one-way trunks.[235] Indeed, AT&T's proposal provides that each party bear their own non-recurring charges.[236]

Verizon also objects to the use of the term "grandfathered" in AT&T's proposed Contract language because Verizon states that if Parties are going to transition to a new architecture, they should mutually agree to do so and not grandfather indefinitely.[237] AT&T's proposal, however, does provide for mutual agreement. Specifically, it says that AT&T and Verizon may mutually agree that specific two-way trunk groups will be retained as two-way groups—or "grandfathered"—even where one party has requested that other two-way trunk groups be converted to a one-way architecture.[238]

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234 AT&T's proposed Contract Schedule IV § 3.2 provides for coordination between AT&T and Verizon on these issues. However, at the same time, the language provides that Verizon would not be tied to the existing physical arrangements. AT&T believes that this proposal is less disruptive to the network, requires fewer engineering and operations resources, and therefore is less costly for both Parties.

235 *See* Verizon Supplemental Statement at 29.

236 *See* AT&T Proposed Contract Sch. IV. § 3.2.3. This fact was also made clear by Mr. Talbott during the hearings. Tr. at 1396. Moreover, AT&T has agreed to clarify this issue by adding the following language to its proposed Contract, "The Party requesting transition shall pay any applicable non-recurring charges to the other Party for any trunks that are converted from the existing interconnection arrangements." With this language we believe Verizon's concern is adequately addressed.

237 *Id.* at 30.

238 *See* Proposed Contract of AT&T at Sch. IV, § 3.2.1. It was not AT&T's intention to prevent Parties from revisiting their decisions on trunking. Therefore, in order to provide either Party with the ability to make new decisions on trunking as their situations change, AT&T would agree to revise its proposed Contract language to explicitly provide that either Party, not just AT&T, has the opportunity to come back and request that two-way trunks be converted to one-way trunks.

Verizon also objects to AT&T's proposal to exclude "exchange access trunks" from the conversion process. The basis of Verizon's objection is that it claims the term "exchange access" has not been defined and thus the proposal is ambiguous.[239] Verizon and AT&T have agreed that AT&T may combine local traffic on Feature Group D exchange access trunks and report local usage factors for proper billing. Many of these FG-D trunk groups operate two-way. AT&T's proposed language is intended to make clear that such combined-use exchange access trunks would be excluded from any re-arrangement plans.[240]

Finally, Verizon claims that AT&T' submission of Part C of Schedule 4 relating to trunk groups is a blatant attempt to circumvent the negotiations process and thus should be rejected.[241] Although AT&T changed this section, there is virtually no substantive difference between the version that AT&T shared with Verizon last year and the version that AT&T shared with Verizon earlier this year and submitted to the Commission for arbitration. AT&T simply re-organized the terms of this section concurrently with the re-written section on POI to conform more closely to the structure of Verizon's model contract.[242]

These requests would follow the same process as an initial requests set forth in AT&T Proposed Contract Sch. IV, § 3.2.2. With this revision, all of Verizon's concerns on this issue will be adequately addressed by AT&T's proposed Contract language. AT&T Exh. 3 at 127.

239 Verizon Supplemental Statement at 30.

240 AT&T Exh. 3 at 128.

241 *Id.*

242 In AT&T's earlier version, the specification of the required trunk groups was scattered across the document. The later version that Verizon objects to lists each distinct type of required trunk group in a single sub-section, in the same way that Verizon lists the trunk groups in its proposed contract. The intention of this non-substantive reorganization was to enable the negotiators and arbitrators to more readily identify any differences between the terms of two documents. Therefore, Verizon's request that the Commission not address AT&T proposed terms under Schedule IV is an unreasonable request that should be rejected.

Issue VII-3 How Should the Parties Define "Interconnection Points" ("IP") and "Points of Interconnection" ("POI")?

This is covered in AT&T's discussion of issue I-1. Beyond that, AT&T rejects Verizon's assertion that the Parties ever came to an agreement on the terms POI and IP. There is, and has been since the inception of negotiations, a fundamental disagreement on the substance of these terms and the implications associated with the use of these terms. Verizon is simply trying, for a third time in this proceeding, to create a distinction between the POI defined in the Act and the "IP" Verizon has concocted.

Issue VII-4 If AT&T fails to establish an Interconnection Point in accordance with the terms of the interconnection agreement, what reciprocal compensation rates and/or inter-carrier compensation rates should Verizon pay AT&T?

I. Verizon's proposed "transport offset" violates Verizon's obligations to be financially responsible for delivering its originating traffic to the POI [Issue VII-4]

As discussed at Issue I.1, the Commission should reject Verizon's proposed "transport offset" intended to reduce the amount of reciprocal compensation AT&T receives if AT&T does not allow Verizon to deliver its traffic at a Verizon originating end office. Specifically, Verizon proposes that if AT&T does not allow Verizon to deliver traffic at Verizon's designated end office for AT&T to pick up, then Verizon proposes to pay the *lesser* of the End Office reciprocal compensation rate or the applicable intercarrier compensation rate minus a transport "offset" equal to Verizon's monthly recurring rate for unbundled dedicated interoffice transport from Verizon's End

Office to the AT&T "IP" (the location where Verizon must deliver its traffic).[243] In short, Verizon wants to sidestep its obligations under the Act to deliver traffic to the POI and shift its transport costs onto AT&T.

AT&T has previously explained that this so-called "transport offset" proposal violates Verizon's obligation to deliver traffic to the POI.[244]

The proposal also violates reciprocal compensation requirements. The Act dictates, at § 252(d)(2)(A), that each carrier shall be permitted mutual and reciprocal recovery of costs relating to the termination of calls originated on another carrier's network:

> [A] state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless ... such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.[245]

Because Verizon's "transport offset' proposal would reduce the amounts AT&T would receive for reciprocal compensation and would ensure that AT&T's costs associated with transport and termination would not be recovered, the proposal is plainly at odds with the law.

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243 Tr. at 1157.

244 *See* supra at Issue I.1.

245 47 U.S.C. § 252(d)(2)(A).

Issue VII-5 When AT&T offers a limited number of IPs, should AT&T be permitted to charge Verizon distance-sensitive charges if Verizon purchases transport to an AT&T IP?

I. Verizon's proposal to pay only non-distance sensitive transport rates to AT&T when it leases AT&T facilities to deliver its traffic to the POI illegally shifts a portion of Verizon costs of origination to AT&T. [Issue VII-5]

Here, again, Verizon is trying to saddle AT&T with costs Verizon should be incurring to deliver traffic to a POI. Instead of paying AT&T its full transport costs if Verizon purchases transport to an AT&T POI, Verizon proposes that it need not pay the distance-sensitive portion of AT&T's transport rates if, in Verizon's view, AT&T has not identified enough points of interconnection to satisfy Verizon's ill-conceived VGRIP proposal.[246]

As discussed at Issue I-1, each Party has a financial obligation to deliver its originating traffic to the POI. This obligation includes fully compensating the other Party for any costs that party incurs to deliver the other party's originating traffic. Verizon's proposal is flatly inconsistent with this obligation.[247]

Verizon's proposal also is not reciprocal. Rather, as explained in the discussion of Issue V.2, Verizon wants to charge AT&T distance-sensitive, market-based, *exchange access rates*—Verizon's highest tariffed rate—whenever AT&T purchases transport from Verizon for the same purpose. The inequities are obvious and prove that Verizon's proposals must be rejected.

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246 Verizon Exh. 4 at 17.

247 In addition, any complaint by Verizon that it is somehow held hostage to paying AT&T's transport rates ignores reality. Verizon is the incumbent with a ubiquitous network. It rarely needs to lease facilities from any carrier, a point Verizon's witness conceded when he admitted that in most cases Verizon would use its own facilities to transport its traffic outside of its local calling area. Tr. at 1237-1238. Verizon's market power stands in stark contrast to that of the CLECs.

Issue VII.6 Should Verizon be forced to offer interconnection facilities and hubbing at central offices other than those intermediate hub locations identified in the NECA 4 tariff?

I. AT&T should have the right to interconnect using a DS-3 interface at any technically feasible point and should not be limited to locations designated by Verizon in its NECA 4 Tariff [Issue VII-6]

This is yet another version of the dispute over AT&T's right to designate the location of its POI. As discussed on several other similar issues (*e.g.*, I-1, I-1A, III-1), Verizon is attempting, again, to place an unlawful limitation on AT&T's right to designate the location of its POI. In this iteration, Verizon asserts that AT&T and other CLECs can use DS-3 interconnection only at the handful of intermediate hub and terminus hub locations Verizon designates in its NECA 4 tariff ("NECA 4 Locations"),[248] even though Verizon routinely provides to itself interoffice transport and associated multiplexing between its various end offices using facilities far exceeding DS-3 capabilities. There is no debate over the efficiencies of DS-3 interconnection.[249] AT&T makes substantial use of DS-3 interfaces across all of its local networks and, like Verizon, recognizes it is an essential tool to achieve lower interconnection costs.[250]

Verizon's proposal, however, would deny AT&T the right to interconnect efficiently and, at the same time, would increase Verizon's revenues. If the Commission

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248 Verizon Exh. 8 at 19. In Verizon's proposed § 5.2, relating to Trunk Group Connections and Ordering, Verizon includes contract language which states: "When Traffic Exchange Trunks are provisioned using a DS-3 interface facility, AT&T shall order the multiplexed DS-3 facilities to the Verizon Central Office that is designated in the NECA 4 Tariff as an Intermediate Hub location, unless otherwise agreed to in writing by Verizon." Verizon Supplemental Statement at 35.

249 Verizon's witness stated that the only trunk interface Verizon provides to itself and others is a DS-1 interface. Tr. at 2243-2244. Therefore, where a DS-3 facility is the least costly method to establish interconnection trunks, multiplexing is required to interface with the Verizon switch.

250 AT&T Exh. 4 at 142.

were to adopt Verizon's proposal to limit DS-3 interfaces only to Verizon-designated locations, AT&T would be forced use more expensive DS-1 facilities in lieu of DS-3 facilities, or to mis-route traffic to a more distant location to use a DS-3 facility.[251] In either case, AT&T would be forced to deploy a less efficient interconnection arrangement than it would absent Verizon's proposed limitation. To make matters worse, this inefficiency would be a double blow, because AT&T's additional costs would likely translate into additional Verizon revenue in the form of higher leased facility charges to AT&T.[252]

Verizon has the technical capability to implement a DS-3 interconnection including DS-3 to DS-1 multiplexing at non-hub locations. Hubbing may be accomplished at any location where Verizon has deployed either a 3X1 DCS or 3x1 multiplexers.[253] Verizon has one or both of these types of hubbing devices available at each Verizon serving wire center in Virginia.[254] Even Verizon's witness Mr. Albert admits that Verizon does multiplexing in "every single central office building that Verizon has."[255] His distinction between "big M" and "little m" multiplex equipment and/or multiplex applications means only that Verizon does not want to provide multiplexing for competitors, not that it cannot.[256] As AT&T's witness Mr. Schell noted,

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251 *Id.*

252 *Id.* at 143.

253 A 3X1 DCS combines the functions of a 3X1 multiplexer and a DS-1 manual cross connect device into a single system. A 3X1 DCS should provide a lower unit cost where 50 or more DS-3s are to be cross-connected. Because of these cost efficiencies, AT&T has 3X1 DCSs deployed in all of its local network switch centers. AT&T Exh. 8 at 38.

254 AT&T Exh. 8 at 38.

255 Tr. at 2618-2619.

256 Tr. at 2619.

"multiplex equipment is multiplex equipment"[257] and either type of equipment can be used to provide DS-3 interconnection and 3X1 multiplexing at non NECA 4 locations. Verizon has not identified any technical reason (other than the fact it does not want to) as to why it should not be required to provide interconnection at the non-hub locations using whatever multiplex equipment and facilities are available.

Indeed, the very way that Verizon provides service to CLECs proves the point. As AT&T witness Schell explained, if a CLEC orders multiple (and higher-priced) DS1s to a Verizon central office that is *not* a NECA 4 office (because Verizon refuses to provide multiplexing for more efficient DS3s), Verizon will provision those DS1s over higher capacity services which Verizon itself will have to multiplex "down" to the DS1 level. This proves two things. First, it shows that Verizon can perform multiplexing at its non-NECA 4 offices. Second, it proves that the real reason Verizon is refusing to offer multiplexing is to reduce the efficiencies of its competitors and, at the same time, increase Verizon's own revenues.[258]

Verizon's position, therefore, violates both its obligation to interconnect at any technically feasible point[259], and it obligations to allow the requesting carrier to choose any technically feasible method of interconnection.[260]

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257 Tr. 9 at 2640.

258 Tr. at 2682-2683. Mr. Albert's "pony" compromise proposal is no compromise at all. All he offered was to add language into the Interconnection Agreement that Verizon, upon request, would recycle 3X1 multiplexing equipment from other offices, a proposal that would be of questionable efficiency. For one thing, he could not indicate what the charges would be for this equipment. Moreover, he acknowledged the process would be slow (he estimated it would take four months to find the equipment and to deinstall and reinstall it). . In any event, the "compromise" is wholly unnecessary. Verizon already has multiplex equipment installed in every office and does not need to implement the process Mr Albert described to meet a CLEC's multiplexing request in a non NECA 4 office. Tr. at 2634-2636.

259 § 251 (c)(2)(B) of the Act obligates Verizon to allow interconnection at any technically feasible point. As noted above, Verizon has not demonstrated that AT&T's request is not technically

feasible. Moreover, even if Verizon must adapt it facilities slightly at the non-NECA 4 locations to accommodate AT&T's request, it is required to do so. On this point the FCC stated that : "[I]nterconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. ***If incumbent LECs were not required****, at least to some extent,* ***to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated.*** *For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection "for the facilities and equipment" of the new entrant.* ***Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector*** *or to provide access to un*bundled elements." *Local Competition Order* at ¶202 (emphasis added).

260 As we stated in our discussion of Issue III.3, the right to require interconnection at any technically feasible point also includes the right to require any technically feasible method of interconnection. The FCC made this clear in the *Local Competition Order* when it stated: "We conclude that under Sections 251(c)(2) and 251(c)(3) any requesting carrier may choose any method of technically feasible interconnection or access to unbundled network elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled network elements." *Local Competition Order* at ¶549.

INTERCARRIER COMPENSATION ISSUES

ISSUE I.5 *ISP INTERCARRIER COMPENSATION* What are the appropriate terms and conditions to comprehensively implement the Commission's *ISP Remand Order*?

I-5(a) How should Verizon and AT&T calculate whether traffic exceeds a 3:1 ratio of terminating to originating traffic?

I-5(b) How should Verizon and AT&T implement the rate caps for the ISP-bound traffic?

I-5(c) How should Verizon and AT&T calculate the growth cap on the total number of compensable ISP-bound traffic minutes?

I-5(d) How should the parties implement a Verizon offer to exchange all traffic subject to section 251(b)(5) at the rate mandated by the FCC for terminating ISP-bound traffic?

I-5(e) What mechanism should the parties utilize to implement, in an expeditious fashion, changes resulting from any successful legal appeals of the Commission's ISP Remand Order?

I. AT&T's Proposed Contract Terms and Condition on the Treatment of ISP-Bound Traffic are Consistent with, and Comprehensively Implement, the FCC's *ISP Remand Order*

The Commission's April 27, 2001 decision asserted jurisdictional authority over traffic delivered to Internet Service Providers ("ISPs") and established a three-year interim, transitional intercarrier compensation scheme for such traffic.[261] Although this decision resolved, at least temporarily, the original issue raised by AT&T,[262] it left unanswered a number of critical implementation issues concerning the three-year transitional scheme; these issues are comprehensively addressed by AT&T's contract

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261 In the Matter of Intercarrier Compensation for ISP-Bound Traffic, Order on Remand, FCC 01-131 (April 27, 2001) ("*ISP Remand Order*").

262 Originally, Issue I-5 was phrased as follows: "Should AT&T receive reciprocal compensation for terminating traffic from Verizon end users to AT&T customers who are internet service providers."

language. Among other things, AT&T proposes mechanisms for calculating the amount of ISP-bound traffic under the Commission's 3:1 ratio; determining appropriate growth caps and rate caps; implementing any Verizon offer to offer exchange all traffic subject to § 251(b)(5) at the rate mandated by the FCC for terminating ISP-bound traffic; and adopting changes resulting from successful legal appeals of the *ISP Remand Order.*[263] In addition, AT&T proposes contract language that would require Verizon to pay all amounts previously owed for reciprocal compensation before being able to take advantage of the new FCC rate structure.[264]

Contrary to Verizon's assertions,[265] the Commission's decision is not self-executing. While Verizon's contract language offers little on the specifics on how the order should be implemented (thus virtually guaranteeing the disputes and delays Verizon welcomes), AT&T's language, discussed below, provides a clear roadmap for implementation.[266]

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263 *See generally*, AT&T Exhibit 4 at Exhibit A.

264 Specifically, AT&T proposed that the new rates shall apply only, *inter alia*, if "Verizon has paid all past due amounts owed to AT&T for the delivery of ISP-bound Traffic prior to June 14, 2001." AT&T Proposed Contract § 2.3(c). Verizon has unilaterally withheld millions of dollars in the Verizon-South region. Tr. at 1665. Verizon simply should not be able to refuse unilaterally to pay reciprocal compensation for over two years – during which time it enjoyed a windfall (*i.e.*, paying **zero** compensation for what it unilaterally determined to be ISP-bound traffic) – and then immediately enter into a much more favorable rate scheme. AT&T merely seeks fair treatment, *i.e.*, payment of what Verizon owes, before Verizon takes advantage of the new rate structure.

265 *See e.g.*, Tr. at 1741.

266 AT&T Exhibit 9 at 3-4.

a. AT&T Proposes a Reasonable Method to Calculate the 3:1 Ratio [Issue I-5(a)].[267]

The *ISP Remand Order* proscribes the methodology for calculating what traffic is eligible for compensation:

> We understand that some carriers are unable to identify ISP-bound traffic. In order to identify this traffic, we adopt a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in this Order.[268]

This language, however, provides no guidance as to what traffic should be included in the calculation of the 3:1 ratio.

AT&T's proposed language, at contract § 2.1, fills that void:

> All Local Traffic[269] that is terminated by one Party for the other Party pursuant to this Agreement within any calendar quarter in excess of an amount (measured by total minutes of use) that is three times the traffic that is terminated by the other Party pursuant to this Agreement shall be conclusively defined as ISP-bound Traffic. All other Local Traffic that is exchanged between the Parties shall be conclusively defined as any call that would be considered a local call ("Voice Traffic").[270]

AT&T's language is wholly consistent with the *ISP Remand Order*. Indeed, AT&T's language clarifies that the term ISP-bound Traffic "shall have the same meaning, when used in this Agreement, as is used in the [*ISP Remand Order*]."

Verizon's language does not follow the FCC's order. Rather, it attempts to expand the universe of traffic on which it avoids compensation payments to include

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267 Issue I-5(a) states: "How should Verizon and AT&T calculate whether traffic exceeds a 3:1 ratio of terminating to originating traffic?"

268 *ISP Remand Order* at ¶ 79.

269 Section 1.51 of AT&T's proposed contract defines "Local Traffic" as "traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other party on that other Party's network, within a given local calling area or expanded are service area such as determined by the calling and called NPA/NXX's."

270 AT&T Proposed Contract § 2.1 (footnotes added).

"Internet Traffic" that is "[a]ny traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission."[271] Indeed, Verizon defines "Measured Internet Traffic" as "[d]ial-up, switched Internet Traffic originated by a Customer of one Party on that Party's network at a point in a Verizon local calling area, and delivered to a *Customer* or an Internet Service Provider served by the other Party, on that other Party's network at a point in the same Verizon local calling area."[272] Verizon seemingly expanded the universe of compensable traffic when it defined "Measured Internet Traffic" as traffic delivered to a "customer" as well as traffic delivered to an ISP.[273] Moreover, Verizon's proposed language would enable it to argue that it was not obligated to pay compensation, which, presumably, could include packet switched voice calls. Verizon freely acknowledged on cross examination that its definition of "Internet Traffic" may be broader than ISP-bound traffic.[274] The Commission should reject Verizon's overly broad definition of ISP-bound traffic for applying the 3:1 ratio and adopt AT&T's proposed contract language.

b. The Rates and Rate Structure Proposed by AT&T Are Consistent with the *ISP Remand Order* and Should be Adopted [Issue I-5(b)].[275]

The FCC has capped the rates carriers may charge each other for terminating ISP-bound traffic.[276] Although rates may be set lower than the capped amount, they may

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271 Verizon Proposed Contract § 3.9.

272 *Id.* § 3.11 (emphasis supplied).

273 *Id.* On cross examination, Verizon, however, testified that "customer" meant the same thing as "ISP." Tr. at 1740-41.

274 Tr. at 1736-37.

275 Issue I-5(b) states: "How should Verizon and AT&T implement the rate caps for the ISP-bound traffic?"

276 *ISP Remand Order* at ¶ 78.

not exceed this level. Consistent with the Commission decision, AT&T proposes, at § 2.2.2 of its proposed contract, that rates be set at the capped level over the term of the interconnection agreement:

> All ISP-bound Traffic that is exchanged pursuant to this Agreement shall be compensated as follows:
>
> (a) Commencing on the effective date of this Agreement and continuing until December 13, 2001, $.0015 per minute of use.
>
> (b) Commencing on December 14, 2001 and continuing until June 13, 2003, $.0010 per minute of use.
>
> (c) Commencing on June 14, 2003, $.0007 per minute of use. To the extent that the FCC has not taken further action with respect to inter-carrier compensation for ISP-bound Traffic by June 14, 2004 and this Agreement remains in effect after June 14, 2004, the Parties agree that the rate of $.0007 per minute of use for ISP-bound Traffic shall remain applicable for such period.[277]

Verizon's proposed language on this issue simply fails to provide sufficient detail. Indeed, Verizon admits that it did not even specify the rate levels that would apply to ISP-bound traffic or even the timeframe under which those rates would apply.[278] A mere reference back to the *ISP Remand Order* is simply not sufficient given that the FCC sets forth only a framework with rate *caps* – not the actual *rates* for terminating ISP-bound traffic. Therefore, even with the cross reference back to the *ISP Remand Order*, the rates for terminating ISP-bound traffic cannot be determined by the language contained in the proposed Verizon contract. The AT&T contact language, where there the rates and associated timeframes are unambiguously stated, should be adopted.

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277 AT&T Proposed Contract, 2.2.2(a)-(c).

278 Tr. at 1761-63. AT&T, in contrast proposed specific rates. *See* Tr. at 1676.

c. AT&T's Methodology for Calculating Growth Caps Is Consistent with the *ISP Remand Order* and Should Be Adopted [Issue I-5(c)].[279]

The *ISP Remand Order* adopted "growth caps" as a means to limit the number of ISP-bound traffic minutes eligible for compensation in the years going forward.[280] To calculate the applicable growth caps, the parties must first determine the number of ISP-bound minutes in a baseline period (the first quarter of 2001). According to the FCC's methodology, ISP-bound minutes are compensable in the year 2001 only to the extent that they do not exceed the baseline amount, plus 10 percent, on an annualized basis.[281] For the year 2002, the upper limit is the number of 2001 compensable minutes plus another ten percent.[282] The calculation of the growth cap—as with the 3:1 ratio calculation—is extremely important in that all traffic in excess of the growth cap will not be compensated. Accordingly, it is essential for the growth cap calculations to be stated clearly in the interconnection agreement among the parties.

AT&T's contract language is sufficiently detailed to allow the parties to understand each of the steps in making the growth cap calculation.[283] Given that Verizon's contract is silent on this important calculation, the Commission should adopt AT&T's contract language on this issue.

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279 Issue I-5(c) states: "How should Verizon and AT&T calculate the growth cap on the total number of compensable ISP-bound traffic minutes?"

280 *ISP Remand Order* ¶ 78.

281 *Id.*

282 *Id.*

283 AT&T Proposed Contract § 2.3.

d. Under the Terms of the *ISP Remand Order,* Verizon's Must Offer to "Mirror" Rates Before It May Implement a New Rate Structure [Issue I-5(d)].[284]

Verizon may take advantage of the FCC's lower, interim rate caps for ISP-bound traffic only if it also "offers to exchange all traffic subject to section 251(b)(5)" at the same lower rate.[285] Consistent with the FCC's decision, AT&T proposed language conditioning the applicability of the new ISP-bound traffic compensation rates on a Verizon offer "to exchange all traffic subject to the reciprocal compensation provisions of section 251(b)(5)" at these revised rates.[286] AT&T's language should be adopted.

e. Any Appellate Decision Substantially Modifying the Commission's *ISP Remand Order* Should Be Expeditiously Implemented [Issue I-5(e)].[287]

AT&T's language provide for an expeditious true-up if reciprocal compensation rates are changed as a result of a stay, reversal or modification of the ISP Remand Order by the United States Court of Appeals for the District of Columbia Circuit.[288] This contract provision recognizes that the parties have entered into the instant Arbitration fully aware that this particular issue is the subject of a pending appeal.[289] If the Court

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284 Issue I-5(d) provides: "How should the parties implement a Verizon offer to exchange all traffic subject to section 251(b)(5) at the rate mandated by the FCC for terminating ISP-bound traffic?"

285 *ISP Remand Order* ¶ 89.

286 AT&T Proposed Contract § 2.2.3(b). Although Verizon, in its cross examination of AT&T's witness Kirchberger, seemed intent on eliciting an admission that Verizon has already made such an offer, that factual question is not before the Commission. Tr. at 1662-1665.

287 Issue I-5(e) states: "What mechanism should the parties utilize to implement, in an expeditious fashion, changes resulting from any successful legal appeals of the Commission's ISP Remand Order?"

288 AT&T Proposed Contract § 2.5.

289 AT&T Exhibit 9 at 5.

were to overturn or otherwise modify the Commission's decision, the economic effect on the parties could be significant. AT&T's proposed language merely recognizes that a decision by the court *will be* forthcoming and that the parties have a right to be made whole at the conclusion of this legal review. Unlike the more general "change in law" provision in the interconnection agreement that is used in the event of an unanticipated legal modification, here the parties are well aware that a decision by the Court is inevitable and that such a decision could reject the FCC's ISP-bound traffic compensation scheme. The parties to the agreement should be made whole in the event of such action by the Court. AT&T's proposed language allows for such a result.

Issue I.6 Virtual FX Is the jurisdiction of a call determined by the NPA-NXXs of the calling and called numbers?

I. AT&T should be compensated for terminating Verizon calls based on the NPA-NXX of the originating and terminating parties involved in the calls. [Issue I-6]

a. Introduction

This issue concerns how carriers should be compensated for a call when one or both of the parties to the call is physically located outside of the calling area of the exchange to which that customer is assigned a number. This situation occurs when one or both customers subscribe to a FX service provided by Verizon, or the "FX-like" service that is provided by AT&T. AT&T's position is that these types of calls should continue to be treated for compensation purposes based upon the NPA-NXX of the calling and called numbers – as is the standard industry practice. Verizon, however, proposes that AT&T's competitive "FX-like" service be treated differently for compensation purposes than Verizon's FX service is treated. As demonstrated below,